IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 2397 of 2007()

AGAINST THE ORDER DATED 27/02/2007 IN CMP. 333 /2007 IN CC.313/2003 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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PETITIONER: 4TH ACCUSED:

N.HARIKRISHNAN, E.V.E FOODS LAKSHMI
CASHEW CORPORATION BUILDING, VADAKKEVILA,
ERAVIPURAM, KOLLAM.

BY ADV. SRI.SANTHOSH SUBRAMANIAN
SRI.SHEJI P.ABRAHAM

RESPONDENTS: COMPLAINANT:

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1. FOOD INSPECTOR, KOLLAM CORPORATION,
KOLLAM.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2397 of 2007

Dated this the 26th day of July 2007

O R D E R

The petitioner is the fourth accused in a prosecution under the provisions of the Food Adulteration Act. The trial has commenced as early as in 2004. PW1 was examined on 09/08/2004. All the accused were given opportunity to cross-examine the said witness. That opportunity was availed also. But subsequently the petitioner was obliged to change his counsel. His present counsel appears to feel that some more questions on the aspect of sampling etc must have been put to PW1, the Food Inspector. The earlier counsel had not put those questions but the petitioner's present counsel feels that some further questions ought to be put. He filed an application under Section 311 Cr.P.C to recall the witness to do further cross-examination. The learned Magistrate, by the impugned order, rejected the said prayer. The petitioner has come to this court claiming to be aggrieved by the said direction.

2. Notice was given to the learned Public Prosecutor. I have heard both counsel. The learned Public Prosecutor does

not oppose the said prayer. Subject to appropriate conditions, such luxury of further opportunity can be granted to the petitioner, it is submitted.

3. I am satisfied, in the facts and circumstances of this case that in the interests of justice, the petitioner, who feels that there was an omission to cross-examine the witness on vital aspects, can be granted permission to further cross-examine that witness. Not that in every case such a request can be allowed; but in the peculiar facts and circumstances of this case, I find the said request to be reasonable.

4. In the result, this petition is allowed. The impugned order is set aside. The learned Magistrate shall give the petitioner an opportunity to further cross-examine PW1 on condition that the petitioner deposits an amount of Rs.350/- (Rupees three hundred and fifty only) as cost before the learned Magistrate on or before the next date of posting.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007